

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

THE UNITED STATES	)	
for the use and benefit of	)	
SEACOAST SCAFFOLD AND	)	civil action no.
EQUIPMENT CORP.	)	
	)	
	)	
	)	
v.	)	
	)	
CUTTER ENTERPRISES, LLC	)	
	)	
and	)	
	)	
ARCH INSURANCE COMPANY,	)	
	)	
	)	
Defendants	)	

**COMPLAINT**

The plaintiff, Seacoast Scaffold and Equipment Corp. (“Seacoast”), hereby complains against defendants Cutter Enterprises, LLC (“Cutter”) and Arch Insurance Company (“Arch”) as follows:

1. This is an action brought pursuant to 40 U.S.C.S. § 3131-33, commonly referred to as the Miller Act (the “Miller Act”), to recover against a labor and material payment bond for work performed by Seacoast for the benefit of the United States of America. Seacoast also asserts several related claims to recover for work performed.

2. Jurisdiction is conferred on this Court pursuant to 40 U.S.C.S. §§ 3131-33 and pursuant to 28 U.S.C.S. § 1367.

3. Venue is proper in this jurisdiction based on the location of the project, the requirements of the Miller Act, and 28 U.S.C.S. § 1391.

4. Seacoast is a Maine corporation with a place of business in South Portland, Maine and Concord, New Hampshire.

5. Defendant Cutter Enterprises LLC (“Cutter”) is a limited liability company with a principal place of business at 105 Industrial Park Road, Vernon, Connecticut 06066.

6. Defendant Arch Insurance Company (“Arch”) is a corporation with a usual place of business at 1601 Cherry Street, 3 Parkway, Suite 1500, Philadelphia, Pennsylvania 19102.

7. On information and belief, the United States of America (“USA”) is the owner of a construction project known as KC46 Hangar Projects Pease ANGB, NH-Project No. W912TF-15-C-0500 located at the former Pease Air Force Base, Portsmouth, New Hampshire (the “Project”).

8. On information and belief, the USA entered into a written contract with Cutter relating to the construction of the Project.

9. In January 2018, Cutter entered into a written contract with Seacoast in which Seacoast agreed to furnish scaffolding with tarps (“Scaffolding”) to the Project in the original amount of \$189,115 (the “Contract”).

10. Arch, as surety, and Cutter, as principal, executed a Payment Bond for the Project dated July in the amount of \$31,594,700.00. The number identifying said bond is SU1123762-0000 (“the Bond”).

COUNT ONE  
(MILLER ACT)

11. Seacoast entered into the Contract to the Scaffolding to the Project for the ultimate use and benefit of the USA.

12. Seacoast performed all of its obligations under the Contract.

13. Cutter has failed and refused to pay the sum of \$77,975.76 for the Scaffolding furnished by Seacoast in accordance with the Contract.

14. Seacoast is an intended beneficiary of the Bond.

15. Seacoast performed all conditions precedent to filing and otherwise perfecting a claim against the Bond, including giving due notice and demand of its claim by a letter dated September 7, 2018.

16. Seacoast is entitled to the benefit of the Bond.

17. Despite Seacoast's rights under the Bond and its demand for payment in the amount of \$77,975.76, Arch, as surety, and Cutter, as principal, have failed to make payment to Seacoast.

THEREFORE, the Plaintiff, Seacoast Scaffold and Equipment Corp. requests that this Honorable Court enter judgment against Arch Insurance Company and Cutter Enterprises, LLC, jointly and severally, in the amount of \$77,975.76 together with pre-judgment interest, costs, and any other and further relief this Court deems just and proper under the circumstances and applicable law.

COUNT TWO  
(BREACH OF CONTRACT)

18. The Contract was amended by Cutter and Seacoast, which revised the ultimate contract price to \$214,486.01.

19. Seacoast furnished the Scaffolding in accordance with the Contract.

20. To date, payment of \$136,510.25 has been made to Seacoast, leaving a balance due in the amount of \$77,975.76.

21. The failure of Cutter to make payment to Seacoast in the amount of \$77,975.76 is a material breach of the Contract.

THEREFORE, the Plaintiff, Seacoast Scaffold and Equipment Corp. requests that this Honorable Court enter judgment against Cutter Enterprises, LLC in the amount of \$77,975.76 together with pre-judgment interest, costs, and any other and further relief this Court deems just and proper under the circumstances and applicable law.

COUNT THREE  
(QUANTUM MERUIT)

22. Seacoast furnished the Scaffolding to the Project at the request of Cutter.

23. The fair market value of that material was \$214,486.01.

24. Cutter accepted the benefit of the Scaffolding with the knowledge that Seacoast expected payment for the fair and reasonable value of such material.

25. Despite repeated demand by Seacoast, Cutter has paid only \$136,510.25, leaving a balance due of \$77,975.76.

THEREFORE, the Plaintiff, Seacoast Scaffold and Equipment Corp. requests that this Honorable Court enter judgment against Arch Insurance Company and Cutter Enterprises, LLC, jointly and severally, in the amount of \$77,975.76 together with pre-judgment interest, costs, and any other and further relief this Court deems just and proper under the circumstances and applicable law.

Dated: May 2, 2019

Seacoast Scaffolding and Equipment Corp.

By its attorneys,

/s/ Jennifer A.W. Rush  
Jennifer A.W. Rush

Norman, Hanson & DeTroy, LLC  
P.O. Box 4600  
Portland, ME 04112-4600  
Tel. (207) 774-7000  
[jrush@nhdlaw.com](mailto:jrush@nhdlaw.com)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

The United States for the use and benefit of Seacoast Scaffold and Equipment Corp.

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
**Jennifer A.W. Rush**  
Norman, Hanson & DeTroy, LLC  
P.O. Box 4600  
Portland, ME 04112-4600  
(207) 774-7000

**DEFENDANTS**

Cutter Enterprises, LLC  
Arch Insurance Company

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) (Arch Ins. Co.)  
**Bradford R. Carver**  
**Watt, Tieder, Hoffar & Fitzgerald, LLP.**  
175 Federal Street, Suite 1225 | Boston, MA 02110  
(857) 504-1144

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                                   |   | PTF                        | DEF                                   |
|---|----------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input checked="" type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): **40 U.S.C.S. 3131-33**

Brief description of cause: **Miller Act bond claim and breach of contract**

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ **77,975.76**

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE **May 2, 2019**

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jennifer A.W. Rush

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

for the

$$\begin{array}{c} ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \end{array}$$

V.

Defendant(s)

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



for the

$$\begin{array}{c} ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \end{array}$$

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\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: